

SABBIA CORPORATION

CONTRACT NO. V578P-6141

**VABCA-5557,
5557R & 5857**

**VA MEDICAL CENTER
HINES, ILLINOIS**

Dominic F. Sabbia, Chicago, Illinois, for the Appellant.

Helen S. Henningsen, Esq., Trial Attorney, Milwaukee, Wisconsin; *Philip S. Kauffman, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE SHERIDAN

Background

On May 12, 2003, the Board reinstated VABCA-5557, 5557R and 5857 to the active docket for the purposes of considering Appellant, Sabbia Corporation's (Sabbia), May 12, 2003 electronic mail message requesting that the Board respond in writing to the following statement regarding VABCA-5557R and 5857:

You erroneously [sic] stated that we did not provide affidavits [sic]. We did indeed provide affidavits [sic]. Therefore your decision is wrong. Further the VA board of contract appeals violated the FOI [A]ct. And acknowledged this in their decision. We were denied information pertaining [to] these cases. This is also wrong. We requested a reconsideration and presented new information and you denied our motion to reconsider.

We reinstated VABCA-5557, VABCA-5557R and VABCA-5857 to the Board's active docket *solely* to respond to the electronic mail message. We note that the Board's Rules do not provide for acceptance of electronic filings.

However, for purposes of dealing with this matter expeditiously we have elected to waive the requirement for written submissions contained in our Rules.

38 C.F.R. § 1.783.

These appeals arose out of a painting contract, Contract No. V578P-6141, between the Department of Veterans Affairs (VA) and Sabbia at the VA Medical Center, Hines, Illinois.

On December 17, 1998, we rendered a decision in VABCA-5557, finding that we lacked jurisdiction over the appeal because a proper claim had never been submitted to the contracting officer. *See Sabbia Corporation*, VABCA Nos. 5557 & 5857, 99-2 BCA ¶ 30,394. Appellant subsequently requested that we reconsider that decision, which on June 30, 1999, we denied in VABCA-5557R. *See Sabbia Corporation*, VABCA Nos. 5557R & 5857, 99-2 BCA ¶ 30,463.

Another appeal, arising out of Sabbia's assertion that an implied-in-fact contract existed between Sabbia and VA which Sabbia claimed was subsequently breached by VA, was docketed as VABCA-5857. VA moved to dismiss VABCA-5857, and, on December 17, 1998, a portion of that appeal seeking specific performance and injunctive relief was dismissed for lack of jurisdiction. *See Sabbia Corporation*, VABCA Nos. 5557 & 5857, 99-2 BCA ¶ 30,394. The Board denied VA's motion to dismiss on the issue of an implied-in-fact contract and alleged breach. VA subsequently filed a motion for summary judgment on the issue of an implied-in-fact contract and alleged breach. On June 30, 1999, we granted summary judgment in VABCA-5857 in favor of the Government, denying Sabbia's claim of an implied-in-fact contract and VA breach. *See Sabbia Corporation*, VABCA Nos. 5557R & 5857, 99-2 BCA ¶ 30,463.

Sabbia did not appeal the December 17, 1998 or June 30, 1999 decisions. Accordingly, those decisions became final pursuant to Section 607(g) of the *Contract Disputes Act*. 41 U.S.C. § 607(g).

Discussion

In its electronic mail message Sabbia asks this Board to respond to its allegations regarding decisions we rendered almost three years ago. We will treat Sabbia's electronic mail message as a MOTION FOR RECONSIDERATION or, in the alternative, a MOTION FOR RELIEF FROM JUDGMENT (MOTION).

Board Rule 29 provides for filing a MOTION FOR RECONSIDERATION within thirty days from the date a party receives the Board's decision. 38 C.F.R. § 1.783(cc). Sabbia availed itself of that opportunity in VABCA-5557R and we denied the MOTION FOR RECONSIDERATION. We note that Sabbia did not file a MOTION FOR RECONSIDERATION in VABCA-5857. The MOTION here, to the extent it asks for reconsideration, is untimely since it was submitted well beyond the thirty days set forth by Rule 29.

We retain the discretion to amend our decisions and relieve a party from the effects of a judgment, but we exercise this power only in extraordinary circumstances in order to correct substantial injustice. *Nitro Electric Corp.*, VABCA No. 3777R, 99-1 BCA ¶ 30,195; *SEI Information Technology*, VABCA No. 1478, 83-1 BCA ¶ 16,223. In exercising this power we look to FEDERAL RULE OF CIVIL PROCEDURE (FRCP) 60 for appropriate guidance. FRCP 60, RELIEF FROM JUDGMENT OR ORDER states, in pertinent part, the following:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation,

or other misconduct of an adverse party . . . or (6) any other reason justifying relief from the operation of the judgment. *The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.*

Fed. R. Civ. P. 60(b) (emphasis added).

To the extent Sabbia's MOTION here is construed as a MOTION FOR RELIEF FROM JUDGMENT under FRCP 60(b)(1)-(3), it, too, is untimely as it was submitted neither within a reasonable time nor within the one year set by FRCP 60.

We regard these matters as closed and will not consider any further filings associated with VABCA Nos. 5557, 5557R and 5857.

Decision

Based on the foregoing, Appellant's MOTION with regard to VABCA Nos. 5557, 5557R and 5857 is DENIED and these appeals are hereby DISMISSED.

DATE: **June 4, 2003**

PATRICIA J. SHERIDAN
Administrative Judge
Panel Chair

We Concur:

RICHARD W. KREMPASKY
Administrative Judge

GARY J. KRUMP
Chief Administrative Judge